

1 IN THE UNITED STATES DISTRICT COURT FOR THE
2 NORTHERN DISTRICT OF OKLAHOMA
3
4

5 W. A. DREW EDMONDSON, in his)
6 capacity as ATTORNEY GENERAL)
7 OF THE STATE OF OKLAHOMA and)
8 OKLAHOMA SECRETARY OF THE)
9 ENVIRONMENT C. MILES TOLBERT,)
10 in his capacity as the)
11 TRUSTEE FOR NATURAL RESOURCES)
12 FOR THE STATE OF OKLAHOMA,)

13 Plaintiff,)
14)

15 vs.)

16 4:05-CV-00329-TCK-SAJ
17)

18 TYSON FOODS, INC., et al,)
19)

20 Defendants.)
21)

22 - - - - -
23 THE VIDEOTAPED DEPOSITION OF
24 MARK SIMMONS, produced as a witness on behalf of
25 the Plaintiff in the above styled and numbered
cause, taken on the 17th day of June, 2008, in the
City of Fayetteville, County of Washington, State of
Arkansas, before me, Lisa A. Steinmeyer, a Certified
Shorthand Reporter, duly certified under and by
virtue of the laws of the State of Oklahoma.

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EXHIBIT

25

1 preparation for this deposition?

2 A I did not. If I did, I did not.

3 Q What's your current position?

4 A I'm chairman of Simmons Foods.

5 Q And how long have you been chairman? 09:18AM

6 A Since sometime in the '80's.

7 Q Simmons Food is now in the process of
8 purchasing Peterson Farms; is that correct?

9 MR. McDANIEL: Object to the form.

10 Q Go ahead and answer, sir. 09:18AM

11 A We have a letter of intent.

12 Q And when was that executed?

13 A About, oh, late May, early June.

14 Q Okay. Now, if you would not cover your
15 mouth -- 09:18AM

16 A Okay.

17 Q -- it would probably help some. And is that a
18 stock purchase or asset purchase, what sort of the
19 just basic structure of it?

20 MR. ELROD: Louis, you'll appreciate the 09:19AM
21 notion that we're sitting in a room that contains a
22 bunch of competitors.

23 MR. BULLOCK: Okay.

24 MR. ELROD: And this is a private
25 transaction between two parties which has not closed 09:19AM

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1 and so on.

2 Q In terms of the poultry growing -- now, your
3 company uses contract growers in part to grow your
4 poultry?

5 A Yes, sir. 09:28AM

6 Q Do you have any company-owned operations?

7 A We have some company-managed farms.

8 Q Okay, but none that are actually owned by
9 Simmons Foods?

10 A Not today. 09:28AM

11 Q Okay. You did in the past?

12 A There were different times when Simmons Foods'
13 name was on the property deeds on some farms.

14 Q How long ago was that?

15 A I can't remember for sure but seven or eight 09:28AM
16 years ago probably.

17 Q The company-managed farms, how many of those
18 are there?

19 A There's 20 some odd.

20 Q Would you have any idea as to how many of 09:29AM
21 those would be in the Illinois River watershed?

22 A I don't think there are any in the Illinois
23 River watershed.

24 Q So it's your belief, sitting here today, that
25 in the Illinois River watershed those are all 09:29AM

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1 contract grower operations that are growing Simmons
2 poultry?

3 A Yes, sir.

4 Q Okay, and -- but Simmons maintains ownership
5 of the birds regardless of whether it's a
6 company-managed or a company-owned farm -- I mean a
7 contracted farm, pardon me?

09:29AM

8 A That's correct.

9 Q You, of course, provide the feed; is that
10 correct?

09:30AM

11 A Yes, sir.

12 Q And the medicine for the birds?

13 A If there's any required.

14 Q Okay, and the grower provides the bedding?

15 A Yes, sir.

09:30AM

16 Q But it is the -- primarily the excrement from
17 the birds that provides the nutrients in the litter?

18 A The bedding material provides some organic
19 material for the soil, so it's a benefit for the
20 fertilization value also. Depends a little bit on
21 what bedding material you use.

09:30AM

22 Q Well, but a significant amount of nutrients
23 comes from the excrement in the birds going into the
24 litter; is that correct?

25 A Yes, sir.

09:30AM

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1 didn't even have phosphorus as one of their
2 conditions, and that science developed through the
3 '90's and is still developing. It's not fully
4 understood I don't think.

5 So in that regard, I think we were very 11:09AM
6 responsible as a company and as an industry.

7 Q Well, the question was whether it is incumbent
8 upon company or an individual that is charged with
9 polluting somebody else's water to investigate
10 whether that's true. 11:09AM

11 A And I think we did that and we responded.

12 Q Okay, and from your response, I take it that
13 you found that there was validity to those charges?

14 A Not necessarily. I think there was potential
15 issues if litter was not applied in the proper 11:09AM
16 manner, and we supported the research to determine
17 what proper manner was and then supported the state
18 law passage to put that into regulation.

19 Q Well --

20 A So I think we've been extremely responsible. 11:09AM

21 Q But that wasn't the question.

22 A I think I answered your question.

23 Q Okay. Did -- when you found that -- if litter
24 wasn't properly applied, it could pollute the water;
25 there came a point where you discovered that; 11:10AM

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1 correct?

2 A I think anybody would say that. We knew that
3 in 1970. You don't have to be a rocket scientist to
4 determine --

5 Q All right. Did you investigate to determine 11:10AM
6 whether in fact poultry litter was being properly
7 applied?

8 A I don't know how to answer that question.

9 Q Well, you found out -- in fact, you said as
10 early as the 1970's, you knew that if people 11:11AM
11 misapplied poultry litter, it could pollute the
12 water. My question is, whether you investigated to
13 find out whether people were in fact properly using
14 this or were misusing it. What --

15 A Poultry litter is a valuable resource as a 11:11AM
16 natural fertilizer, and just the common sense of it
17 is that people are not going to abuse the
18 application because they want -- there was knowledge
19 through the NRCS about how much nitrogen and other
20 kinds of fertilizer that a farmer should use on his 11:11AM
21 pasture and how much would grow grass, and we have
22 no evidence that folks were abusing what --

23 commercial fertilizer or poultry litter, and we
24 didn't feel it was our responsibility to do the
25 check on the farmers out there who had litter or 11:12AM

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